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**From:**

**Sent:** Tuesday, August 11, 2009 10:53:30 AM

**To:**

**Cc:**

**Subject:** RE: Your e-mail of 8/10/09 on DRD

Issue an FPAA that determines the amount of dividends qualifying for the capital gain rate ("qualified dividends" under section 1(h)(11)) and the amount of dividends passing through to your corporate partner under section 243(b).

Or get a closing agreement (partial agreement) from your partner agreeing to the amounts you determine. The closing agreement for this issue would take this issue out of TEFRA for your corporate partner.

There is no space in 6b saying that the dividend is not qualified. I assume you mean that line 6b was blank and that dividends were reflected only on line 6a. If the dividend is reported on line 6a, it could still be subject to section 243(b) since nothing in line 6 or its instructions would disqualify it from this treatment by virtue of it being reported on line 6a. Only items under section 1(h)(11) appear to be reported on line 6b. If the books and records of the partnership show that any portion of the amount reported on line 6a came from an "affiliated corporation" within the meaning of section 243(b) then we would likely be bound by the partnership books and records on this portion under Roberts v. Commissioner, 94 T.C. 853, 860 (1990), absent a TEFRA proceeding redetermining the source.

If you agree that the dividends come from an affiliated corporation, based on the partnership books and records, and that the DRD is correctly computed, there would be no need to open a TEFRA proceeding.